IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 835 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 861 OF 2014

Navkar Terminals Limited

….Petitioner/ Transferor Company

AND

COMPANY SCHEME PETITION NO 836 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 862 OF 2014

Harvard Credit Rating Agency Private Limited

…Petitioner/ Transferee Company

In the matter of the Companies Act, 1956 (1 of 1956);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation OF Navkar Terminals Limited WITH Harvard Credit Rating Agency Private Limited AND Their respective Shareholders

Called for Hearing

Mr. Hemant Sethi i/b M/s. Hemant Sethi & Co., Advocates for the Petitioner Company in both the Petitions.

Mr. S. Ramakantha Official Liquidator.

Mr. G Hariharan , i/b Mr. H.P. Chaturvedi for Regional Director.

CORAM: S. J. Kathawalla, J.

DATE: 30th January 2015

1. Heard the learned counsel for the Petitioner. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the petition.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 to the Scheme of Amalgamation of Navkar Terminals Limited with Harvard Credit Rating Agency Private Limited and their respective shareholders.

3. Learned Counsel for the Petitioner Companies states that the Transferor Company is in the business of providing container and freight terminal services and the Transferee Company has not yet commenced its business.

4. The Scheme is proposed for consolidation of operating business of Navkar Group, ease of management, reduction of operating and administrative costs.

5. The Transferor Company and the Transferee Company had approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.

6. The learned Advocate for the Petitioner Companies further states that, the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Summons for Directions.

7. The Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 and the rules made there under. The said undertaking is accepted.

8. The Official Liquidator has filed his report on 21st January, 2015 stating therein that the Affairs of the Petitioner/ Transferor Company has been conducted in a proper manner and that the Petitioner/ Transferor Company may be ordered to be dissolved by this Court.

9. The Regional Director has filed an Affidavit on 28th January, 2015 stating therein that save and except as stated in paragraph 6(a) to (d) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said Affidavit, the Regional Director has stated that :

(a) *"Clause 6.8 of the scheme provides for adjustment for differences in Accounting Policies between Transferor Company and Transferee Company. In this regard, it is submitted that in addition to the compliance of Accounting Standard - 14, the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standard such as AS-5 etc."*

(b) *Clause 8.1 of the scheme provides for change of name of Transferee Company. In this connection Transferee Company may be directed to comply with the provisions of section 21/23 of the Companies Act 1956 corresponding to new section 13(2) & (3) read with 15 of the Companies Act, 2013 in respect of filing of necessary forms with the Registrar of Companies and the proposed new name will be allowed subject to availability of the same, by the Registrar of Companies since under the computerized MCA 21 System of allotting the names, it is systemically not possible to reserve the names. Therefore, the name if available at the time of filing of such application, shall be made available by the Registrar of Companies, Mumbai.*

(c) Clause 9 of the Scheme provides for change in the object clause of the Memorandum of Association of the Transferee Company. In this connection, the Transferee Company may be directed to comply with provisions of section 13(1), (6) read with 15 of the Companies Act, 2013 and to file amended copy of Memorandum of Association alongwith Form No.21 with the Registrar of Companies.

(d) It is observed that, the clause 5. I of the scheme provides for issue of preference shares only to the equity shareholders of Transferor Company for transferring the assets and liabilities of Transferor Company to Transferee Company. In this regard, it is submitted that the rights and privileges enjoyed by the equity shareholders of Transferor Company shall not get the same treatment from the Transferee Company in as much as the Transferee Company is issuing only preference shares in lieu of equity shares. It is also more pertinent to note that the Transferor Company was originally a partnership firm which was converted into Part IX company under the provisions of the Companies Act and the partner of the elsewhere partnership firm may not continue to be equity shareholder of Transferee Company. Though, the equity share capital of the Transferee Company is held by M/s. Navkar Corporation Limited and the shareholders of Navkar Corporation Ltd are almost the same set of equity shareholders of Transferor Company, it cannot be construed that the shareholders of Transferor Company and Transferee Company are one and the same. In as much as the company is distinct from its shareholders and therefore the share held by M/s. Navkar Corporation Limited cannot be considered as shares held by shareholders of Transferor Company. In view of the above, is there any change in the transfer

of ownership under section 47 of the Income Tax Act and whether partners of elsewhere partnership firm are become the shareholders of Transferee Company are matter within the domain of Income Tax Authority. It is respectfully submits that the Tax issue if any arising out of this scheme shall be subject to final decision of Income Tax Authority and approval of the scheme by Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the petitioner company after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the petitioner company."

10. As far as the observations made in paragraph 6 (a) of the Affidavit of Regional Director is concerned, the Transferee Company undertakes that it shall pass such accounting entries as may be necessary in connection with the Scheme to comply with any other accounting standards.

11. As far as the observations made in paragraph 6 (b) of the Affidavit of Regional Director is concerned, the Petitioner/ Transferee Company through their Counsel undertakes to comply with the provisions of section 21/23 of the Companies Act 1956 corresponding to new section 13(2) & (3) read with 15 of the Companies Act, 2013 in respect of filing of necessary forms with the Registrar of Companies and the proposed new name will be allowed subject to availability of the same, by the Registrar of Companies at the time of making such application by the Transferee Company.

12. As far as the observations made in paragraph 6 (c) of the Affidavit of Regional Director is concerned, the Petitioner/ Transferee Company through their Counsel undertakes that the Transferee Company shall comply with provisions of section 13(1), (6) read with 15 of the

Companies Act, 2013 and shall file amended copy of Memorandum of Association alongwith Form INC-28 with the Registrar of Companies.

13. In so far as observations made in paragraph 6(d) of the Affidavit of Regional Director is concerned, the Petitioner Company submit that the Petitioner is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

14. The learned Counsel for the Regional Director on instruction from Mr. Chandanamuthu, Joint Director legal, in the office of Ministry of Corporate Affairs states that they are satisfied with the undertaking given by the Petitioner/ Transferee Company.

15. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. None of the parties concerned have come forward to oppose the Scheme.

16. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 835 and 836 of 2014, filed by the Transferor Company and the Transferee Company respectively, are made absolute in terms of prayer clause (a) of the respective Petitions.

17. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of the order.

18. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Amalgamation with the concerned Registrar of

companies, electronically, along with E-form INC-28 in addition to the physical copy as per the relevant provisions of Companies Act, 1956/2013 Act.

19. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director. The Petitioner Company in Company Scheme Petition No 835 of 2014 to pay sum of Rs.10,000/- to the Official Liquidator, High Court, Bombay. The Costs to be paid within four weeks, from date of the Order.

20. Filing and issuance of the drawn up order is dispensed with.

21. All regulatory authorities concerned to act on a copy of this order along with Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. J. Kathawalla, J.)